

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2002-101

May 16, 2003

PUBLIC UTILITIES COMMISSION
Investigation of Complaints Regarding
Northern Utilities, Inc.'s Billing Practices

ORDER CLARIFYING
SCOPE AND INVITING
FURTHER PROCESS

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Order, we clarify the scope of this proceeding and invite Northern Utilities, Inc. (Northern) to request further process that it believes to be warranted.

II. PROCEDURAL HISTORY

On March 18, 2003, an Examiner's Report was issued recommending that we find that Northern's estimated billing practices, during the period January 1, 2000 to the present, violate our Rules or constitute unreasonable utility practices. The Report recommends that we deny the Company revenues from re-billings for a period greater than six months from the date of the make-up bill or re-billing.¹

The procedural schedule afforded parties an opportunity to file comments or exceptions to the Report on April 2, 2003 for consideration by the Commission at its April 7, 2003 deliberative session. The Office of the Public Advocate (OPA) filed comments in support of the findings and conclusions of the Report but urged the Commission to further declare that any foregone revenues resulting from the recommended remedy be excluded from consideration in any future rate proceeding.

In place of exceptions to the Report, Northern filed a Motion for Ruling on Scope and Suspension for Procedural Schedule (Motion). In its Motion, Northern contends that the findings in the Report exceed the scope of issues noticed in this proceeding and that they appear to prejudicially address issues subject to consideration in the Commission's pending management audit of Northern's customer service performance. Northern also asserts that the Report's proposed findings and remedy exceed the scope of this proceeding because they apply to all customer accounts, rather than only to the specific complaints filed with the Consumer Assistance Division (CAD). Accordingly, Northern requested a ruling that would clarify the scope of this proceeding, exclude issues under review in the management audit (including billing and meter reading

¹ We use the terms "make-up bills" or "re-bills" to mean bills issued by Northern that charge for service that has been provided to the customer for which, due to inaccurate estimated bills, that customer has not been previously billed. This is typically a bill based on actual usage after a number of bills based on estimated usage have been issued to the customer.

practices), delay the imposition of any penalties in this docket pending further hearings and the completion of the management audit, and allow further procedure to complete the record and to enable Northern to give its exceptions to the Report.

We considered Northern's Motion at our deliberative session on April 7, 2003 and deferred consideration of the Examiner's Report pending further process as discussed further below.

III. DISCUSSION

A. Request to Suspend Procedural Schedule

In its Motion, Northern argues that it has been unfairly surprised by the inclusion of additional estimated billing complaints filed with the CAD in the proposed resolution of this proceeding and that additional evidentiary process is warranted. It also argues that, by including all accounts that have been subject to prolonged periods of estimated bills and subsequent re-bills rather than only the specific CAD complaints identified earlier in this proceeding, the proposed findings and remedy exceed the scope stated in our Notice of Investigation in this proceeding. *Notice of Proceeding (March 5, 2002)* (NOI or Notice). Further, Northern contends that it is prejudiced by the extension of the Report's findings in this investigation to billing and meter reading practices because those areas of Northern's operations are under consideration in the Commission's pending management audit. See *Maine Public Utilities Commission, Management Audit of Northern Utilities, Inc.'s Customer Service and Investigation to Implement Service Quality Incentive Plan*, Docket No. 2002-140 (Management Audit or Audit.) Northern is concerned that Staff has prejudged the management audit issues and requests a ruling that rejects any findings related to audit issues.

We grant Northern's motion to suspend the procedural schedule and invite Northern to request the additional process it believes to be warranted for complete consideration of the matters at issue in this proceeding (discussed further below) and the findings and recommendations contained in the Report. We anticipate that such further process, as requested by Northern and determined by the Hearing Examiner, may include allowing additional evidence on both the newly identified CAD complaints and on the generic issues, and, for good cause, on any previously identified CAD complaints. We also expect that further process may include an opportunity for Northern to submit argument on such questions as whether any violations occurred and, if so, what sanctions are appropriate.²

With respect to Northern's request to delay the remedy phase of this proceeding to await the conclusion of the Management Audit, we will not preclude the possibility of waiting until the Management Audit is concluded before final resolution of this docket. However, we will move forward with any further process as may be

² Northern may wish to delay its request for further process until it reviews the Supplemental Examiner's Report that Advisory Staff plans to issue in response to our directive at the April 7th deliberative session.

warranted in this proceeding – short of final resolution -- without awaiting the completion of the Management Audit proceeding.

B. Scope of Investigation

1. Generic billing practices or specific complaints

Northern asserts that both the accounts and the issues to which the Report's finding and recommendations apply improperly exceed the scope of this Investigation as stated in the NOI. While we acknowledge some ambiguity in the language of the NOI, Northern should have been aware that the scope of this proceeding would include the generic issue of billing practices. The first sentence of the NOI states that we were initiating an investigation of Northern's "billing practices." Another reference to the breadth of the subject under investigation states:

In this Investigation, we will consider how the provisions of Chapter 81(3) of the Commission rules, regarding estimated and actual meter reading requirements and allowable utility billing error recoveries, relate to this circumstance. We may consider whether Northern should be required to change its billing system or take other action necessary to reduce or eliminate the instances of prolonged estimated billing. [fn. 1 omitted] Finally, we will determine whether Northern should be allowed to recover the previously unbilled amounts when its system has rejected actual usage information in calculating customer bills.

NOI at 2.

Similarly, by directing Northern to provide certain information, e.g. the number of instances in which Northern issued make-up bills in 2000 and 2001 as well as average meter reading frequency and total make-up amounts billed as of the date of the NOI, by class, we signaled that the NOI would be a generic investigation of the make-up billing issue.

Taken together, the references noted in the NOI should have adequately informed Northern about the scope of this Investigation, particularly that it would pursue generic billing practices issues. Nevertheless, to be certain that we have given Northern adequate opportunity to address the matters at issue in the proceeding, we will afford Northern with an opportunity to present further evidence or argument on the additional cases and proposed resolution of this Investigation into its estimated billing practices.

2. Conflict with Management Audit

Northern also asserts that the Examiner's Report addresses issues that are also under consideration in the management audit proceeding, such as billing and meter reading practices, and that it is prejudiced thereby. We disagree. The purpose of this proceeding is to consider whether Northern's issuance of large make-up bills or re-bills resulting from continued usage estimation may violate our rules or constitute an unreasonable utility practice that has adversely affected customers, and to take appropriate action based on those findings. Conversely, the management audit will evaluate Northern's customer services and recommend performance benchmarks and incentive mechanisms to help ensure that adequate performance levels are met and maintained in the future.

The independent auditors are charged with providing a report based on their own extensive investigation and expertise, as well as accepted industry standards. The auditors' task is to recommend incentive mechanisms for prospective application that will bring Northern up to, or maintain, acceptable service performance levels as measured by certain indicators. The auditors have not been directed to evaluate whether Northern's billing practices, which have led to numerous CAD complaints, comport with our rules or constitute unreasonable practices under Maine law.

Accordingly, we

O R D E R

That Northern Utilities, Inc.'s Motion for Ruling on Scope and Suspension of Procedural Schedule is granted as discussed above.

Dated at Augusta, Maine, this 16th day of May, 2003.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.